

**PROGRESS Act Negotiated Rulemaking
Federal Team
25 CFR Part 1000 Regulations to be Revised/Clarified
Preliminary Side-by-Side Summary Analysis**

25 DFR Part 1000 – “Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act”

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>Subpart A – General Provisions</p> <p>1000.1 Authority. 1000.2 Definitions. 1000.3 Purpose and Scope. 1000.4 Policy Statement.</p>	<p>Subpart A – General Provisions</p> <p>1000.1 Yes 1000.2 Yes, Law vs. Regulation definitions differ 1000.3 Yes 1000.4 Yes, a) Congressional findings update b) Congressional declaration of policy update c) Secretarial SG Policies review</p>
<p>Subpart B – Selection of Additional Tribes for Participation in Tribal Self-Governance</p> <p>Purpose and Definitions 1000.10 What is the purpose of this subpart? 1000.11 What is the “applicant pool”? 1000.12 What is a “signatory”? 1000.13 What is a “nonsignatory Tribe”?</p>	<p>Subpart B – Selection of Additional Tribes for Participation in Tribal Self-Governance</p> <p>Purpose and Definitions 1000.10 Yes [update statute reference] 1000.11 No 1000.12 No 1000.13 No</p>

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<p>Eligibility</p> <p>1000.14 Who is eligible to participate in Tribal self-governance?</p> <p>1000.15 How many additional Tribes/Consortia may participate in self-governance per year?</p> <p>1000.16 What criteria must a Tribe/Consortium satisfy to be eligible for admission to the “applicant pool”?</p> <p>1000.17 What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?</p> <p>1000.18 May a Consortium member Tribe withdraw from the Consortium and become a member of the applicant pool?</p> <p>1000.19 What is done during the “planning phase”?</p> <p>1000.20 What is required in a planning report?</p> <p>1000.21 When does a Tribe/Consortium have a “material audit exception”?</p> <p>1000.22 What are the consequences of having a material audit exception?</p>	<p>Eligibility</p> <p>1000.14 No</p> <p>1000.15 No</p> <p>1000.16 No</p> <p>1000.17 Yes [402(C)3 and 404(c)]</p> <p>1000.18 Yes [402(b)(4)] Note: References to “AFA” throughout need to be updated</p> <p>1000.19 No</p> <p>1000.20 No</p> <p>1000.21 Yes [402(C)3; 404(c); 200.516(3) questioned cost \$25,000]</p> <p>1000.22 Yes NOTE 1: Need to clarify “no uncorrected significant and material audit exceptions” with ANY federal agency. What agency documentation regarding corrections is required? NOTE 2: Audits 404(c). Need to clarify if a tribe is under the \$750 threshold for Single Audit report that the Financial Audit should still be submitted. Note 3: 200.516(3) OMB raised the threshold of questioned cost to \$25,000</p>
<p>Admission into the Applicant Pool</p> <p>1000.23 How is a Tribe/Consortium admitted to the applicant pool?</p> <p>1000.24 When does OSG accept applications to become a member of the applicant pool?</p>	<p>Admission into the Applicant Pool</p> <p>1000.23 Yes [update OSG’s address]</p> <p>1000.24 No</p>

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<p>1000.25 What are the deadlines for a Tribe/Consortium in the applicant pool to negotiate a compact and annual funding agreement (AFA)?</p> <p>1000.26 Under what circumstances will a Tribe/Consortium be removed from the applicant pool?</p> <p>1000.27 How does the Director select which Tribes in the applicant pool become self-governance Tribes?</p> <p>1000.28 What happens if an application is not complete?</p> <p>1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?</p> <p>1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?</p> <p>1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?</p>	<p>1000.25 No</p> <p>1000.26 No</p> <p>1000.27 No</p> <p>1000.28 No</p> <p>1000.29 No</p> <p>1000.30 No</p> <p>1000.31 No</p>
<p>Withdrawal From a Consortium Annual Funding Agreement</p> <p>1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?</p> <p>1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?</p> <p>1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?</p> <p>1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds</p>	<p>Withdrawal From a Consortium Annual Funding Agreement</p> <p>1000.32 Yes [Mature contract status; effective date]</p> <p>1000.33 Yes [(c) from “carryover” to “unexpended”]</p> <p>1000.34 Yes [timeline]</p> <p>1000.35 No</p>

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<p>associated with a construction project if the withdrawing Tribe so requests?</p>	
<p>Subpart C—Section 402(d) Planning and Negotiation Grants</p> <p>Purpose and Types of Grants 1000.40 What is the purpose of this subpart? 1000.41 What types of grants are available?</p>	<p>Subpart C—Section 402(d) Planning and Negotiation Grants</p> <p>Purpose and Types of Grants 1000.40 No 1000.41 No (ISD reference?)</p>
<p>Availability, Amount, and Number of Grants 1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act? 1000.43 May a Tribe/Consortium use its own resources to meet its self-governance planning and negotiation expenses? 1000.44 What happens if there are insufficient funds to meet the Tribal requests for planning/negotiation grants in any given year? 1000.45 How many grants will the Department make each year and what funding will be available?</p>	<p>Availability, Amount, and Number of Grants 1000.42 Yes 1000.43 No 1000.44 No 1000.45 No Note: Review in light that DOI Grant funds have not been made available for a number of years.</p>
<p>Selection Criteria 1000.46 Which Tribes/Consortia may be selected to receive a negotiation grant? 1000.47 What must a Tribe/Consortium do to receive a negotiation grant? 1000.48 What must a Tribe do if it does not wish to receive a negotiation grant?</p>	<p>Selection Criteria 1000.46 No 1000.47 No 1000.48 No</p>

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<p>Advance Planning Grant Funding</p> <p>1000.49 Who can apply for an advance planning grant?</p> <p>1000.50 What must a Tribe/Consortium seeking a planning grant submit in order to meet the planning phase requirements?</p> <p>1000.51 How will Tribes/Consortia know when and how to apply for planning grants?</p> <p>1000.52 What criteria will the Director use to award advance planning grants?</p> <p>1000.53 Can Tribes/Consortia that receive advance planning grants also apply for a negotiation grant?</p> <p>1000.54 How will a Tribe/Consortium know whether or not it has been selected to receive an advance planning grant?</p> <p>1000.55 Can a Tribe/Consortium appeal within DOI the Director's decision not to award a grant under this subpart?</p>	<p>Advance Planning Grant Funding</p> <p>1000.49 No</p> <p>1000.50 Yes [Audit requirements]</p> <p>1000.51 No</p> <p>1000.52 No</p> <p>1000.53 No</p> <p>1000.54 No</p> <p>1000.55 No</p>
<p>Subpart D—Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs</p> <p>Purpose and Eligibility</p> <p>1000.60 What is the purpose of this subpart?</p> <p>1000.61 Are other funds available to self-governance Tribes/Consortia for planning and negotiating with non-BIA bureaus?</p>	<p>Subpart D—Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs</p> <p>Purpose and Eligibility</p> <p>1000.60 No</p> <p>1000.61 No</p>
<p>Eligibility and Application Process</p> <p>1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?</p>	<p>Eligibility and Application Process</p> <p>1000.62 No</p>

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<p>1000.63 Under what circumstances may planning and negotiation grants be awarded to Tribes/Consortia?</p> <p>1000.64 How does the Tribe/Consortium, know when and how to apply to OSG for a planning and negotiation grant?</p> <p>1000.65 What kinds of activities do planning and negotiation grants support?</p> <p>1000.66 What must be included in the application?</p> <p>1000.67 How will the Director award planning and negotiation grants?</p> <p>1000.68 May non-BIA bureaus provide technical assistance to a Tribe/Consortium in drafting its planning grant application?</p> <p>1000.69 How can a Tribe/Consortium obtain comments or selection documents received or utilized after OSG has made a decision on a planning grant application?</p> <p>1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?</p> <p>1000.71 Can an applicant appeal a decision not to award a grant?</p> <p>1000.72 Will OSG notify Tribes/Consortia and affected non-BIA bureaus of the results of the selection process?</p> <p>1000.73 Once a Tribe/Consortium has been awarded a grant, may the Tribe/Consortium obtain information from a non-BIA bureau?</p>	<p>1000.63 No</p> <p>1000.64 No</p> <p>1000.65 No</p> <p>1000.66 No</p> <p>1000.67 No</p> <p>1000.68 No</p> <p>1000.69 No</p> <p>1000.70 No</p> <p>1000.71 No</p> <p>1000.72 No</p> <p>1000.73 No</p>
<p>Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs</p> <p>1000.80 What is the purpose of this subpart?</p> <p>1000.81 What is an annual funding agreement (AFA)?</p>	<p>Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs</p> <p>Note: References to “AFA” need to be updated throughout</p> <p>1000.80 No</p> <p>1000.81 No</p>

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<p>Contents and Scope of Annual Funding Agreements 1000.82 What types of provisions must be included in a BIA AFA? 1000.83 Can additional provisions be included in an AFA? 1000.84 Does a Tribe/Consortium have the right to include provisions of Title I of Pub. L. 93-638 in an AFA? 1000.85 Can a Tribe/Consortium negotiate an AFA with a term that exceeds one year?</p>	<p>Contents and Scope of Annual Funding Agreements 1000.82 Yes [403(m)] 1000.83 No 1000.84 No (consider updating cite to 410) 1000.85 Yes [update cite to 403(p)(4)] NOTE: Add Existing and Subsequent FA provisions in 403p</p>
<p>Determining What Programs May Be Included in an AFA 1000.86 What types of programs may be included in an AFA? 1000.87 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary? 1000.88 Do Tribes/Consortia need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under an AFA? 1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect? 1000.90 What happens if an AFA expires before the effective date of the successor AFA?</p>	<p>Determining What Programs May Be Included in an AFA 1000.86 No 1000.87 No 1000.88 Yes 405(d) 1000.89 No 1000.90 Yes [Update with Existing and Subsequent FA provisions]</p>
<p>Determining AFA Amounts 1000.91 What funds must be transferred to a Tribe/Consortium under an AFA? 1000.92 What funds may not be included in an AFA?</p>	<p>Determining AFA Amounts 1000.91 Yes [Review for consistency with current legislation, 102-477, DOT, etc.] 1000.92 Yes [update cite to 403(m)(1)] 1000.93 No</p>

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<p>1000.93 May the Secretary place any requirements on programs and funds that are otherwise available to Tribes/Consortia or Indians for which appropriations are made to agencies other than DOI?</p> <p>1000.94 What are BIA residual funds?</p> <p>1000.95 How is BIA's residual determined?</p> <p>1000.96 May a Tribe/Consortium continue to negotiate an AFA pending an appeal of residual functions and amounts?</p> <p>1000.97 What is a Tribal share?</p> <p>1000.98 How does BIA determine a Tribe's/Consortium's share of funds to be included in an AFA?</p> <p>1000.99 Can a Tribe/Consortium negotiate a Tribal share for programs outside its region/agency?</p> <p>1000.100 May a Tribe/Consortium obtain funding that is distributed on a discretionary or competitive basis?</p> <p>1000.101 Are all funds identified as Tribal shares always paid to the Tribe/Consortium under an AFA?</p> <p>1000.102 How are savings that result from downsizing allocated?</p> <p>1000.103 Do Tribes/Consortia need Secretarial approval to reallocate funds between programs that the Tribe/Consortium administers under the AFA?</p> <p>1000.104 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?</p>	<p>1000.94 Yes [update to PROGRESS Act language]</p> <p>1000.95 Yes [Final offer language]</p> <p>1000.96 Yes [Final offer language]</p> <p>1000.97 Yes [401(12); update cite from 405(d) to 412(d)]</p> <p>1000.98 No</p> <p>1000.99 No</p> <p>1000.100 No</p> <p>1000.101 No</p> <p>1000.102 No</p> <p>1000.103 Yes [405(d)]</p> <p>1000.104 No</p>
<p>Establishing Self-Governance Base Budgets</p> <p>1000.105 What are self-governance base budgets?</p>	<p>Establishing Self-Governance Base Budgets</p> <p>1000.105 Yes [“Stable”]</p> <p>1000.106 No</p>

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<p>1000.106 Once a Tribe/Consortium establishes a base budget, are funding amounts renegotiated each year? 1000.107 Must a Tribe/Consortium with a base budget or base budget-eligible program amounts negotiated before January 16, 2001 negotiate new Tribal shares and residual amounts? 1000.108 How are self-governance base budgets established? 1000.109 How are self-governance base budgets adjusted?</p>	<p>1000.107 Yes [update date]</p> <p>1000.108 No 1000.109 No</p>
<p>Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements</p> <p>Purpose 1000.120 What is the purpose of this subpart? 1000.121 What is an annual funding agreement for a non-BIA program?</p>	<p>Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements</p> <p>Purpose 1000.120 No 1000.121 No</p>
<p>Eligibility 1000.122 What non-BIA programs are eligible for inclusion in an AFA? 1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate? 1000.124 What programs are included under section 403(b)(2) of the Act? 1000.125 What programs are included under section 403(c)? 1000.126 What does “special geographic, historical or cultural” mean? 1000.127 Under section 403(b)(2), when must programs be awarded non-competitively?</p>	<p>Eligibility 1000.122 No 1000.123 No</p> <p>1000.124 No</p> <p>1000.125 No 1000.126 No 1000.127 No</p>

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<p>1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?</p> <p>1000.129 Are there any programs that may not be included in an AFA?</p> <p>1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?</p> <p>1000.131 Will Tribes/Consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?</p> <p>1000.132 How will the Secretary consult with Tribes/Consortia in developing the list of available programs?</p> <p>1000.133 What else is on the list in addition to eligible programs?</p> <p>1000.134 May a bureau negotiate with a Tribe/Consortium for programs not specifically included on the annual section 405(c) list?</p> <p>1000.135 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one Tribe?</p> <p>1000.136 When will this determination be made?</p>	<p>1000.128 No</p> <p>1000.129 No</p> <p>1000.130 No</p> <p>1000.131 No</p> <p>1000.132 Yes</p> <p>1000.133 No</p> <p>1000.134 Yes</p> <p>1000.135 No</p> <p>1000.136 No</p>
<p>Funding</p> <p>1000.137 What funds are included in an AFA?</p> <p>1000.138 How are indirect cost rates determined?</p> <p>1000.139 Will the established indirect cost rate always apply to new AFAs?</p>	<p>Funding</p> <p>1000.137 No</p> <p>1000.138 Yes [update to 2 CFR?]</p> <p>1000.139 Yes [update to 2 CFR?]</p> <p>1000.140 Yes [update to 2 CFR and 106(h) Construction]</p>

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<p>1000.140 How does the Secretary determine the amount of indirect contract support costs? 1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates? 1000.142 Instead of the negotiated indirect cost rate, is it possible to establish a fixed amount or another negotiated rate for indirect costs where funds are limited?</p>	<p>1000.141 No 1000.142 Yes [update to 2 CFR?]</p>
<p>Other Terms and Conditions 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?</p>	<p>Other Terms and Conditions 1000.143 No</p>
<p>Reallocation, Duration and Amendments 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program? 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA? 1000.146 Can a Tribe/Consortium negotiate an AFA with a non-BIA bureau for which the performance period exceeds one year? 1000.147 Can the terms and conditions in a non-BIA AFA be amended during the year it is in effect? 1000.148 What happens if an AFA expires before the effective date of the successor AFA?</p>	<p>Reallocation, Duration and Amendments 1000.144 No 1000.145 No [Construction?] 1000.146 No 1000.147 No 1000.148 Yes [update for Existing and Subsequent FA 403(p)]</p>
<p>Subpart G—Negotiation Process for Annual Funding Agreements</p>	<p>Subpart G—Negotiation Process for Annual Funding Agreements</p>

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<p>Purpose 1000.160 What is the purpose of this subpart?</p>	<p>Purpose 1000.160 No</p>
<p>Negotiating a Self-Governance Compact 1000.161 What is a self-governance compact? 1000.162 What is included in a self-governance compact? 1000.163 Can a Tribe negotiate other terms and conditions not contained in the model compact? 1000.164 Can a Tribe/Consortium have an AFA without entering into a compact? 1000.165 Are provisions in compacts negotiated before January 16, 2001, effective after implementation?</p>	<p>Negotiating a Self-Governance Compact 1000.161 Yes [update to 404(a)] 1000.162 Yes [update to 404(b)] 1000.163 No 1000.164 Yes [update to 404(a) The Secretary shall negotiate and enter into a written compact with each Indian Tribe participating in self-governance] 1000.165 Yes Note: Revisions to Appendix A Model Compact</p>
<p>Negotiation of Initial Annual Funding Agreements 1000.166 What are the phases of the negotiation process? 1000.167 Who may initiate the information phase? 1000.168 Is it mandatory to go through the information phase before initiating the negotiation phase? 1000.169 How does a Tribe/Consortium initiate the information phase? 1000.170 What is the letter of interest? 1000.171 When should a Tribe/Consortium submit a letter of interest? 1000.172 What steps does the bureau take after a letter of interest is submitted by a Tribe/Consortium?</p>	<p>Negotiation of Initial Annual Funding Agreements 1000.166 No 1000.167 No [May the Secretary initiate the phase?] 1000.168 No 1000.169 Yes [update communication method for electronic or email] 1000.170 Yes [update cite to 412(c)] 1000.171 No 1000.172 No 1000.173 No [May the Secretary initiate the phase?]</p>

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<p>1000.173 How does a newly selected Tribe/Consortium initiate the negotiation phase? 1000.174 How and when does the bureau respond to a request to negotiate? 1000.175 What is the process for conducting the negotiation phase? 1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings? 1000.177 What happens when the AFA is signed? 1000.178 When does the AFA become effective? 1000.179 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement?</p>	<p>1000.174 No 1000.175 Yes [update for Final Offer 406(c) provisions] 1000.176 No 1000.177 Yes [update for Submission 403(f) provisions] 1000.178 Yes [update for Submission 403(f) provisions] 1000.179 Yes [update for Final Offer 406(c) provisions]</p>
<p>Negotiation Process for Successor Annual Funding Agreements 1000.180 What is a successor AFA? 1000.181 How does the Tribe/Consortium initiate the negotiation of a successor AFA? 1000.182 What is the process for negotiating a successor AFA?</p>	<p>Negotiation Process for Successor Annual Funding Agreements 1000.180 Yes 1000.181 Yes 1000.182 Yes Note: Update for Existing and Subsequent FA 403(p) provisions</p>
<p>Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds 1000.190 What is the purpose of this subpart? 1000.191 To whom does this subpart apply? 1000.192 What services, contracts, or funds are protected under section 406(a)? 1000.193 Who may raise the issue of limitation or reduction of services, contracts, or funding?</p>	<p>Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds Note: 406(a) is deleted from Title IV; 408(l)(4) 1000.190 Yes 1000.191 Yes 1000.192 Yes 1000.193 Yes</p>

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<p>1000.194 When must BIA raise the issue of limitation or reduction of services, contracts, or funding?</p> <p>1000.195 When must an affected Tribe/Consortium or Tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?</p> <p>1000.196 What must be included in a finding by BIA or in a claim by or an affected Tribe/Consortium or Tribal organization regarding the issue of a limitation or reduction of services?</p> <p>1000.197 How will BIA resolve a claim?</p> <p>1000.198 How must a limitation or reduction in services, contracts, or funds be remedied?</p>	<p>1000.194 Yes</p> <p>1000.195 Yes</p> <p>1000.196 Yes</p> <p>1000.197 Yes</p> <p>1000.198 Yes</p>
<p>Subpart I—Public Consultation Process</p> <p>1000.210 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?</p> <p>1000.211 Will the bureau contact the Tribe/Consortium before initiating public consultation process for a non-BIA AFA under negotiation?</p> <p>1000.212 What is the role of the Tribe/Consortium when a bureau initiates a public meeting?</p> <p>1000.213 What should the bureau do if it is invited to attend a meeting with respect to the Tribe's/Consortium's proposed AFA?</p> <p>1000.214 Will the bureau and the Tribe/Consortium share information concerning inquiries about the Tribes/Consortia and the AFA?</p>	<p>Subpart I—Public Consultation Process</p> <p>1000.210 No</p> <p>1000.211 No</p> <p>1000.212 No</p> <p>1000.213 No</p> <p>1000.214 No</p>
<p>Subpart J—Waiver of Regulations</p>	<p>Subpart J—Waiver of Regulations</p>

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<p>1000.220 What regulations apply to self-governance Tribes? 1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium? 1000.222 How does a Tribe/Consortium obtain a waiver? 1000.223 When can a Tribe/Consortium request a waiver of a regulation? 1000.224 How can a Tribe/Consortium expedite the review of a regulation waiver request? 1000.225 Are meetings or discussions mandatory? 1000.226 On what basis may the Secretary deny a waiver request? 1000.227 What happens if the Secretary denies the waiver request? 1000.228 What are examples of waivers prohibited by law? 1000.229 May a Tribe/Consortium propose a substitute for a regulation it wishes to be waived? 1000.230 How is a waiver approval documented for the record? 1000.231 How does a Tribe/Consortium request a reconsideration of the Secretary's denial of a waiver? 1000.232 When must DOI respond to a request for reconsideration?</p>	<p>Note: Revise Subpart in accordance with 409(b) and 414</p> <p>1000.220 Yes 1000.221 No 1000.222 No 1000.223 No 1000.224 No 1000.225 No 1000.226 Yes [update to Regulation Waiver 409(b) provisions] 1000.227 No 1000.228 Yes [406(a) is deleted] 1000.229 No 1000.230 No 1000.231 No 1000.232 No</p> <p>Note: Update to Regulation Waiver provisions, extension, 120 days, failure to make determination, etc.; and Final Offer provisions if waiver proposed in negotiation of Compact or FA</p>
<p>Subpart K—Construction</p> <p>1000.240 What construction programs included in an AFA are subject to this subpart?</p>	<p>Subpart K—Construction</p> <p>Note: Entire Subpart should be reviewed to be consistent with 407 (new Construction provisions)</p> <p>1000.240</p>

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<p>1000.241 Does this subpart create an agency relationship? 1000.242 What provisions relating to a construction program may be included in an AFA? 1000.243 What special provisions must be included in an AFA that contains a construction program? 1000.244 May the Secretary suspend construction activities under an AFA? 1000.245 May a Tribe/Consortium continue work with construction funds remaining in an AFA at the end of the funding year? 1000.246 Must an AFA that contains a construction project or activity incorporate provisions of Federal construction standards? 1000.247 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act? 1000.248 What is the Tribe's/Consortium's role in a construction program included in an AFA? 1000.249 What is the Secretary's role in a construction program in an AFA? 1000.250 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA? 1000.251 What happens when a Tribe/Consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension? 1000.252 Do all provisions of other subparts apply to construction portions of AFAs?</p>	

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<p>1000.253 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?</p> <p>1000.254 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?</p> <p>1000.255 May a Tribe/Consortium reallocate funds among construction programs?</p> <p>1000.256 Must the Secretary retain project funds to ensure proper health and safety standards in construction projects?</p>	
<p>Subpart L—Federal Tort Claims</p> <p>1000.270 What does this subpart cover?</p> <p>1000.271 What other statutes and regulations apply to FTCA coverage?</p> <p>1000.272 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?</p> <p>1000.273 Is there a deadline for filing FTCA claims?</p> <p>1000.274 How long does the Federal government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?</p> <p>1000.275 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?</p> <p>1000.276 Does FTCA apply to a self-governance AFA if FTCA is not referenced in the AFA?</p>	<p>Subpart L—Federal Tort Claims</p> <p>Note: Check each section with SOL Torts Practice Branch</p> <p>1000.270 No</p> <p>1000.271 No</p> <p>1000.272 No</p> <p>1000.273 No</p> <p>1000.274 No</p> <p>1000.275 No</p> <p>1000.276 No</p> <p>1000.277 No</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>1000.277 To what extent shall the Tribe/Consortium cooperate with the Federal government in connection with tort claims arising out of the Tribe's/Consortium's performance?</p> <p>1000.278 Does this coverage extend to subcontractors of self-governance AFAs?</p> <p>1000.279 Is FTCA the exclusive remedy for a tort claim, including a claim concerning personal injury or death, resulting from the performance of a self-governance AFA?</p> <p>1000.280 What employees are covered by FTCA for medical-related claims?</p> <p>1000.281 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the self-governance AFA?</p> <p>1000.282 May persons who are not Indians or Alaska Natives assert claims under FTCA?</p> <p>1000.283 If the Tribe/Consortium or the Tribe's/Consortium's employee receives a summons and/or complaint alleging a tort covered by FTCA, what should a Tribe/Consortium do?</p>	<p>1000.278 No</p> <p>1000.279 No</p> <p>1000.280 No</p> <p>1000.281 No</p> <p>1000.282 No</p> <p>1000.283 No</p>
<p>Subpart M—Reassumption</p> <p>1000.300 What is the purpose of this subpart?</p> <p>1000.301 When may the Secretary reassume a Federal program operated by a Tribe/Consortium under an AFA?</p> <p>1000.302 What is “imminent jeopardy” to a trust asset?</p> <p>1000.303 What is imminent jeopardy to natural resources?</p> <p>1000.304 What is imminent jeopardy to public health and safety?</p>	<p>Subpart M—Reassumption</p> <p>Note: Review entire Subpart in accordance with 406(b)</p> <p>1000.300 No</p> <p>1000.301 Yes [406(b)]</p> <p>1000.302 Yes [406(b)]</p> <p>1000.303 Yes [406(b)]</p> <p>1000.304 Yes [406(b)]</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>1000.305 In an imminent jeopardy situation, what must the Secretary do?</p> <p>1000.306 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?</p> <p>1000.307 What happens if the Secretary's designated representative determines that the Tribe/Consortium cannot mitigate the conditions within 60 days?</p> <p>1000.308 What will the notice of reassumption include?</p> <p>1000.309 How much time will a Tribe/Consortium have to respond to a notice of imminent jeopardy?</p> <p>1000.310 What information must the Tribe's/Consortium's response contain?</p> <p>1000.311 How will the Secretary reply to the Tribe's/Consortium's response?</p> <p>1000.312 What happens if the Secretary accepts the Tribe's/Consortium's proposed measures?</p> <p>1000.313 What happens if the Secretary does not accept the Tribe's/Consortium's proposed measures?</p> <p>1000.314 What must a Tribe/Consortium do when a program is reassumed?</p> <p>1000.315 When must the Tribe/Consortium return funds to the Department?</p> <p>1000.316 May the Tribe/Consortium be reimbursed for actual and reasonable “wind up costs” incurred after the effective date of retrocession?</p> <p>1000.317 Is a Tribe's/Consortium's general right to negotiate an AFA adversely affected by a reassumption action?</p>	<p>1000.305 Yes [406(b)]</p> <p>1000.306 Yes [406(b)]</p> <p>1000.307 Yes [406(b)]</p> <p>1000.308 Yes [406(b)]</p> <p>1000.309 Yes [406(b)]</p> <p>1000.310 No</p> <p>1000.311 Yes [406(b)]</p> <p>1000.312 No</p> <p>1000.313 No</p> <p>1000.314 No</p> <p>1000.315 No</p> <p>1000.316 No</p> <p>1000.317 No</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>1000.318 When will the Secretary return management of a reassumed program?</p>	<p>1000.318 No</p>
<p>Subpart N—Retrocession</p> <p>1000.330 What is the purpose of this subpart?</p> <p>1000.331 Is a decision by a Tribe/Consortium not to include a program in a successor agreement considered a retrocession?</p> <p>1000.332 Who may retrocede a program in an AFA?</p> <p>1000.333 How does a Tribe/Consortium retrocede a program?</p> <p>1000.334 When will the retrocession become effective?</p> <p>1000.335 How will retrocession affect the Tribe's/Consortium's existing and future AFAs?</p> <p>1000.336 Does the Tribe/Consortium have to return funds used in the operation of a retroceded program?</p> <p>1000.337 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?</p> <p>1000.338 What happens to a Tribe's/Consortium's mature contractor status if it has retroceded a program that is also available for self-determination contracting?</p> <p>1000.339 How does retrocession affect a bureau's operation of the retroceded program?</p>	<p>Subpart N—Retrocession</p> <p>Note: Review entire Subpart to be congruous with 402(b)(4) (withdrawal)</p> <p>1000.330 No</p> <p>1000.331 Yes [Subsequent FA provisions]</p> <p>1000.332 No</p> <p>1000.333 No Note: Review in accordance with 402(b)(4) (withdrawal)</p> <p>1000.334 Yes [update to Retrocession 105(e) and 405(e) provisions]</p> <p>1000.335 No</p> <p>1000.336 No</p> <p>1000.337 No</p> <p>1000.338 Yes [Audit requirement; 402(b)(4)(F)]</p> <p>1000.339 No</p>

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<p>Subpart O—Trust Evaluation Review</p> <p>1000.350 What is the purpose of this subpart?</p> <p>1000.351 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian Tribes and individuals under self-governance?</p> <p>1000.352 What are “trust resources” for the purposes of the trust evaluation process?</p> <p>1000.353 What are “trust functions” for the purposes of the trust evaluation process?</p>	<p>Subpart O—Trust Evaluation Review</p> <p>1000.350 Yes [update citation of statute]</p> <p>1000.351 Yes [update citation of statute]</p> <p>1000.352 No</p> <p>1000.353 No</p>
<p>Annual Trust Evaluations</p> <p>1000.354 What is a trust evaluation?</p> <p>1000.355 How are trust evaluations conducted?</p> <p>1000.356 May the trust evaluation process be used for additional reviews?</p> <p>1000.357 May the parties negotiate standards of review for purposes of the trust evaluation?</p> <p>1000.358 Can an initial review of the status of the trust asset be conducted?</p> <p>1000.359 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?</p> <p>1000.360 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?</p> <p>1000.361 Will the annual review include a review of the Secretary's residual trust functions?</p>	<p>Annual Trust Evaluations</p> <p>1000.354 No</p> <p>1000.355 Yes [Tribal Trust Evaluation System (TES) project]</p> <p>1000.356 No</p> <p>1000.357 No</p> <p>1000.358 No</p> <p>1000.359 No</p> <p>1000.360 No</p> <p>1000.361 No</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>1000.362 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation? 1000.363 What if the trust evaluation reveals problems that do not rise to the level of imminent jeopardy? 1000.364 Who is responsible for corrective action? 1000.365 What are the requirements of the review team report? 1000.366 Can the Department conduct more than one trust evaluation per Tribe per year? 1000.367 Will the Department evaluate a Tribe's/Consortium's performance of non-trust related programs?</p>	<p>1000.362 Yes [406(b)(1)(b)] 1000.363 No 1000.364 No 1000.365 Yes [Tribal Trust Evaluation System (TES) project] 1000.366 No 1000.367 No Note: How will the Tribal Trust Evaluation System (TES) affect this regulation?</p>
<p>Subpart P—Reports</p> <p>1000.380 What is the purpose of this subpart? 1000.381 How is information about self-governance developed and reported? 1000.382 What may the Tribe's/Consortium's annual report on self-governance address?</p>	<p>1000.320 No 1000.381 Yes [412] 1000.382 No</p>
<p>Subpart Q—Miscellaneous Provisions</p> <p>1000.390 How can a Tribe/Consortium hire a Federal employee to help implement an AFA? 1000.391 Can a Tribe/Consortium employee be detailed to a Federal service position? 1000.392 How does the Freedom of Information Act apply?</p>	<p>1000.390 No 1000.391 No 1000.392 No</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>1000.393 How does the Privacy Act apply?</p> <p>1000.394 What audit requirements must a self-governance Tribe/Consortium follow?</p> <p>1000.395 Do OMB circulars and revisions apply to self-governance funding agreements?</p> <p>1000.396 Does a Tribe/Consortium have additional ongoing requirements to maintain minimum standards for Tribe/Consortium management systems?</p> <p>1000.397 Are there any restrictions on how AFA funds may be spent?</p> <p>1000.398 May a Tribe/Consortium invest funds received under a self-governance agreement?</p> <p>1000.399 How may interest or investment income that accrues on AFAs be used?</p> <p>1000.400 Can a Tribe/Consortium retain savings from programs?</p> <p>1000.401 Can a Tribe/Consortium carry over funds not spent during the term of the AFA?</p> <p>1000.402 After a non-BIA AFA has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of funds?</p> <p>1000.403 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under an AFA?</p> <p>1000.404 Must self-governance Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81, 82a, and 476 regarding professional and attorney contracts?</p> <p>1000.405 Are AFA funds non-Federal funds for the purpose of meeting matching requirements?</p>	<p>1000.393 No</p> <p>1000.394 No</p> <p>1000.395 Yes [update cite; 405(c); 414]</p> <p>1000.396 Yes [update cite to 2CFR Part 200]</p> <p>1000.397 No</p> <p>1000.398 Yes [408(j)]</p> <p>1000.399 No</p> <p>1000.400 No</p> <p>1000.401 Yes [408(k)]</p> <p>1000.402 No Note: Overpayment?</p> <p>1000.403 No</p> <p>1000.404 No</p> <p>1000.405 No</p>

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<p>1000.406 Does Indian preference apply to services, activities, programs and functions performed under a self-governance AFA? 1000.407 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?</p>	<p>1000.406 No 1000.407 No</p>
<p>Supply Sources 1000.408 Can a Tribe/Consortium use Federal supply sources in the performance of an AFA?</p>	<p>1000.408 Yes [408(h)]</p>
<p>Prompt Payment Act 1000.409 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA, non-Indian program AFA?</p>	<p>1000.409 Yes [408(i)]</p>
<p>Subpart R—Appeals</p> <p>1000.420 What does “Title-I eligible programs” mean in this subpart? 1000.421 What is the purpose of this subpart? 1000.422 How must disputes be handled? 1000.423 Are there any decisions that are not administratively appealable under this subpart? 1000.424 Does a Tribe/Consortium have a right to an informal conference to resolve any disputes? 1000.425 How does a Tribe/Consortium request an informal conference? 1000.426 How is an informal conference held? 1000.427 What happens after the informal conference?</p>	<p>Note: Review in light of Final Offer provisions</p> <p>1000.420 No 1000.421 No 1000.422 No 1000.423 Yes [406(b) is deleted] 1000.424 No 1000.425 No 1000.426 No 1000.427 No 1000.428 No</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>1000.428 How may a Tribe/Consortium appeal a decision made after the AFA or compact or amendment to an AFA or compact has been signed?</p> <p>1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to the CBCA?</p> <p>1000.430 Who handles appeals regarding reassumption for imminent jeopardy?</p> <p>1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?</p> <p>1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?</p> <p>1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?</p> <p>1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?</p> <p>1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?</p> <p>1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?</p> <p>1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?</p> <p>1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?</p>	<p>1000.429 Yes [update cites]</p> <p>1000.430 No</p> <p>1000.431 No</p> <p>1000.432 Yes [Final Offer]</p> <p>1000.433 Yes [Final Offer]</p> <p>1000.434 Yes [Final Offer]</p> <p>1000.435 Yes [Final Offer]</p> <p>1000.436 Yes [Final Offer]</p> <p>1000.437 Yes [Final Offer]</p> <p>1000.438 Yes [Final Offer]</p>

<p>Current 25 CFR Part 1000</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <ol style="list-style-type: none"> 1. All subparts need references updated 2. All subparts need legal citations updated 3. No- indicates no language updates anticipated, however reference and citation updates may be required 4. Yes- indicates language updates anticipated
<p>Subpart S—Conflicts of Interest</p> <p>1000.460 What is an organizational conflict of interest?</p> <p>1000.461 What must a Tribe/Consortium do if an organizational conflict of interest arises under an AFA?</p> <p>1000.462 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?</p> <p>1000.463 What types of personal conflicts of interest involving Tribal officers, employees or subcontractors would have to be regulated by a Tribe/Consortium?</p> <p>1000.464 What personal conflicts of interest must the standards of conduct regulate?</p> <p>1000.465 May a Tribe/Consortium negotiate AFA provisions on conflicts of interest to take the place of this subpart?</p>	<p>1000.460 No</p> <p>1000.461 No</p> <p>1000.462 No</p> <p>1000.463 No</p> <p>1000.464 No</p> <p>1000.465 Yes [405(b)]</p>

Appendix A to Part 1000

Model Compact of Self Governance Between the Tribe and the Department of the Interior

<p>Current Appendix A</p> <p>Model Compact</p>	<p>Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification</p> <p>Model compact: Yes [revisions to update language to new law and regulations]</p>
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Part 1001 – Self Governance Program

Current Part 1001	Notes on how the PROGRESS Act affects each subpart and any recommendations OSG may have for revision/clarification
Subpart A – General Provisions 1000.1 Authority. 1000.2 Definitions. 1000.3 Purpose and Scope. 1000.4 Policy Statement.	Note: A new model compact should be published [404]

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